



Reprinted
March 1, 2005

SENATE BILL No. 620

DIGEST OF SB 620 (Updated February 28, 2005 9:02 pm - DI 52)

Citations Affected: IC 13-14; IC 13-18; noncode.

Synopsis: Combined sewer overflows. Amends the permissible terms of certain variances from water quality standards and of variance renewals. Requires a variance application to include a pollutant minimization plan. Establishes a combined sewer overflow (CSO) wet weather limited use subcategory for waters affected by receiving CSO's as specified in an approved long term control plan. Establishes requirements for long term control plans. Provides that where appropriate, environmental permits must contain a schedule of compliance. Requires the department of environmental management (IDEM), upon request of an NPDES permittee, to establish a schedule of compliance to meet water quality based requirements during development, approval, and implementation of a long term control plan. Requires IDEM to review and revise the guidance developed for CSO communities.

Effective: Upon passage.

Gard, Broden, Riegsecker

January 24, 2005, read first time and referred to Committee on Energy and Environmental Affairs.

February 22, 2005, amended, reported favorably — Do Pass.

February 28, 2005, read second time, amended, ordered engrossed.

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SB 620—LS 7707/DI 52+



Reprinted
March 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 620

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-14-8-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A variance
3 from a water quality standard that is at least in part the basis of a
4 National Pollutant Discharge Elimination System (NPDES) permit
5 issued under this title must meet the conditions specified in:
6 (1) 40 CFR Part 132, Appendix F, Procedure 2.C; and
7 (2) rules adopted by the board.
8 (b) Except as provided in subsection (c), a variance from a water
9 quality standard of the water pollution control board under section 8 of
10 this chapter or IC 13-7-7-6 (before its repeal) may be:
11 (1) granted for not more than five (5) years; and
12 (2) renewed for not more than five (5) years.
13 (b) A variance application must contain a pollutant
14 minimization plan specific to the pollutant for which the variance
15 is requested. With respect to a variance relating to an NPDES
16 permit for a combined sewer overflow discharge, this subsection is
17 satisfied if the NPDES permit holder has prepared a long term

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control plan and is implementing the nine (9) minimum controls pursuant to:

(1) 33 U.S.C. 1342(q); and

(2) 59 FR 18688.

(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit

(1) issued under this title; and

(2) extended under IC 13-15-3-6 or IC 13-7-10-2(c) (before its repeal);

remains in effect until the National Pollutant Discharge Elimination System permit expires.

(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met.

SECTION 2. IC 13-18-3-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.3. (a) A long term control plan; upon implementation; fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:

(1) the plan provides for the implementation of cost effective control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;

(2) the plan provides; at a minimum; for the capture for treatment of first flush;

(3) the plan is reviewed periodically; and

(4) additional controls are implemented as provided in section 2.4 of this chapter.

Cost effectiveness may be determined; at the option of the permit holder; by using a knee of the curve analysis.

(b) (a) When This subsection applies if a use attainability analysis is required for a suspension of designated uses under this chapter; the department must; to the maximum extent permitted under state or federal law; performed and approved to change the designated use

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of a water body receiving wet weather discharges from combined sewer overflows from the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather subcategory established in section 2.5 of this chapter to that subcategory. Upon implementation of the approved long term control plan, the plan fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan.

(b) A long term control plan must meet the requirements of:

(1) Section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)); and

(2) 59 FR 18688.

(c) An approved long term control plan shall be incorporated into:

(1) the NPDES permit holder's NPDES permit; or

(2) an order of the commissioner under IC 13-14-2-6.

(d) If a use attainability analysis is performed, the department shall:

(1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and

(2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.

SECTION 3. IC 13-18-3-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.4. ~~An NPDES permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards. including standards suspended under section 2.5 of this chapter.~~ The NPDES permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The NPDES permit holder shall:

(1) document to the department that the long term control plan has been reviewed;

(2) update the long term control plan as necessary;

(3) submit any amendments to the long term control plan to the department for approval; and

(4) implement control alternatives determined to be cost effective and affordable.

Cost effectiveness may be determined, at the option of the NPDES permit holder, by using a knee of the curve analysis in accordance with section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)) and 59 FR 18688.

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SECTION 4. IC 13-18-3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) Subject to the limitations of subsection (d), designated uses and associated water quality criteria are temporarily suspended on a site specific basis; A **CSO wet weather limited use subcategory** is established for waters affected by discharges from receiving combined sewer overflow points listed in the National Pollutant Discharge Elimination System (NPDES) permit due to overflows, as specified in an approved long term control plan. The CSO wet weather events, if: limited use subcategory applies to a specific water body after implementation of an approved long term control plan for the combined sewer system whose overflow discharges affect those waters is implemented and the conditions of subsection (b) are satisfied. The following requirements apply to the CSO wet weather limited use subcategory:

- (1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;
- (2) the approved long term control plan is incorporated into the permit holder's NPDES permit;
- (3) the approved long term control plan:
 - (A) satisfies the requirements of section 2.3 of this chapter; and
 - (B) specifies the designated uses and water quality standards to be suspended under this section;
- (4) the permit holder:
 - (A) has implemented the approved long term control plan; or
 - (B) is implementing the approved long term control plan in accordance with the schedule approved in the long term control plan;
- (5) the permit holder is in compliance with the requirements for the operation and maintenance of its wastewater treatment facilities and combined sewer system, including its combined sewer operational plan approved by the department; and
- (6) the provisions of 40 CFR 131.10; 40 CFR 131.20; and 40 CFR 131.21 are satisfied.

The provisions of 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(b) Existing uses as defined in 40 CFR 131.3(c) and associated water quality criteria may be suspended only in accordance with federal law.

(c) To the extent permitted under federal law, the department shall provide a compliance schedule for attainment of water quality based

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limitations for discharges from combined sewer overflow points in the NPDES permit during the period when the long term control plan is being developed:

(d) A temporary suspension applies only:

(1) to the NPDES permit holder for discharges from the permit holder's listed combined sewer overflow points; and

(2) (1) The water quality based requirements associated with the CSO wet weather limited use subcategory that apply to waters affected by wet weather combined sewer overflows are determined by an approved long term control plan for the combined sewer system. The water quality based requirements remain in effect during the time and to the physical extent that the designated uses and water quality standards are not attained due to the discharges from the listed combined sewer overflow points; recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained, but ~~no~~ for not more than four (4) days after the date the overflow discharge ends.

(e) The board may adopt rules in accordance with IC 13-14-8 and IC 13-14-9 to amend the water quality standards to include the terms of the temporary suspension allowed by this section:

(2) At all times other than those described in subdivision (1), the water quality criteria associated with the appropriate recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory apply unless there is a change in the use designation as a result of a use attainability analysis.

(b) The CSO wet weather limited use subcategory applies if:

(1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;

(2) the approved long term control plan:

(A) is incorporated into:

(i) the NPDES permit holder's NPDES permit; or

(ii) an order of the commissioner under IC 13-14-2-6;

(B) satisfies the requirements of section 2.3 of this chapter; and

(C) specifies the water quality based requirements that apply to combined sewer overflows during and immediately following wet weather events, as provided in subsection (a)(1);

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(3) the NPDES permit holder has implemented the approved long term control plan; and

(4) subject to subsection (c), 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

(c) For purposes of subsection (b)(4), 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(d) The department shall implement the CSO wet weather limited use subcategory and associated water quality based requirements under this section when the subcategory and requirements are approved by the United States Environmental Protection Agency. The department shall seek approval of the United States Environmental Protection Agency in a timely manner.

~~(f)~~ (e) The NPDES permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically ~~but at least every three (3) years.~~ **as provided in the long term control plan.** The NPDES permit holder shall provide all such information to the department.

~~(g)~~ (f) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the NPDES permit holder shall review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The NPDES permit holder shall provide the results of the review to the department.

~~(h)~~ A temporary suspension under this section may be authorized only to the extent allowed under federal law. If the department determines that information provided under this section demonstrates that uses being suspended are attainable, the department shall promptly notify the permit holder of its determination. A permit holder may appeal the department's determination under this section in accordance with IC 4-21-5.

(i) After the effective date of the determination under subsection (h), the long term control plan may be modified to achieve attainment of the previously suspended uses and associated water quality criteria. The compliance schedule and other provisions of the NPDES permit shall also be modified as necessary.

(g) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section before October 1, 2006.

SECTION 5. IC 13-18-3-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.6. (a) Where appropriate, permits shall

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1 contain schedules of compliance requiring the permittee to take
 2 specific steps to achieve expeditious compliance with applicable
 3 standards, limitations, and other requirements.

4 (b) The schedule of compliance shall require compliance as soon
 5 as reasonably possible, but may remain in effect as long as the
 6 National Pollutant Discharge Elimination System (NPDES) permit
 7 requirements are in effect.

8 (c) The department shall, at the request of the NPDES permit
 9 holder, incorporate in the permit a schedule of compliance for
 10 meeting the water quality based requirements associated with
 11 combined sewer overflows during the period of development,
 12 approval, and implementation of the long term control plan. The
 13 schedules of compliance:

- 14 (1) may exceed time frames authorized under 327 IAC; and
 15 (2) may not exceed the period specified for implementation in
 16 an approved long term control plan.

17 (d) If the term of a schedule of compliance exceeds the term of
 18 an NPDES permit, the department shall continue to implement the
 19 schedule of compliance continuously before and during each
 20 successive permit term, to the maximum duration as provided in
 21 subsection (c). The permit shall specify that the schedule of
 22 compliance lasts beyond the term of the permit.

23 (e) Upon request of the permittee, the department shall modify
 24 NPDES permits containing water quality based requirements
 25 associated with combined sewer overflows to provide schedules of
 26 compliance as provided in subsection (c).

27 (f) The board shall adopt rules under IC 13-14-8 and IC 13-14-9
 28 to implement this section before October 1, 2006.

29 SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before
 30 September 1, 2005, the department of environmental management
 31 shall review and revise the guidance developed for combined sewer
 32 overflow communities to incorporate and reflect the law as in
 33 effect on July 1, 2005.

34 (b) This SECTION expires September 1, 2005.

35 SECTION 7. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Senate Bill 620.

GARD

SENATE MOTION

Madam President: I move that Senator Riegsecker be added as coauthor of Senate Bill 620.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 620, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 5 with "[EFFECTIVE UPON PASSAGE]".

Page 1, line 4, after "System" insert "(NPDES)".

Page 1, line 4, delete ":".

Page 1, line 5, delete "(1)".

Page 1, run in lines 4 through 5.

Page 1, line 6, reset in roman "(1)".

Page 1, line 6, delete "(A)".

Page 1, line 7, reset in roman "(2)".

Page 1, line 7, delete "(B)".

Page 1, line 7, delete "; and" and insert ".".

Page 1, delete line 13, begin a new paragraph and insert:

"(b) A variance application must contain a pollutant minimization plan specific to the pollutant for which the variance is requested. With respect to a variance relating to an NPDES permit for a combined sewer overflow discharge, this subsection is satisfied if the NPDES permit holder has prepared a long term control plan and is implementing the nine (9) minimum controls pursuant to:

(1) 33 U.S.C. 1342(q); and

(2) 59 FR 18688."

Page 1, line 14, delete "(b)".

Page 1, line 14, strike "A variance granted under section 8 of this chapter or".

Page 1, strike lines 15 through 17.

Page 2, line 4, strike "remains in effect".

Page 2, line 4, delete "for as long as".

Page 2, line 4, strike "the National Pollutant Discharge"

Page 2, line 5, strike "Elimination System permit".

Page 2, line 5, delete "is in effect."

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains

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in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met."

Page 2, line 25, after "performed" insert **"and approved"**.

Page 2, line 27, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 2, line 34, delete "the Consolidated Appropriations Act (P.L. 106-554);" and insert **"Section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q));"**.

Page 3, line 14, delete "." and insert **"and affordable."**

Page 3, line 17, delete "the Consolidated Appropriations Act (P.L. 106-554)" and insert **"section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q))"**.

Page 3, line 23, after "weather" insert **"limited"**.

Page 3, line 23, after "waters" insert **"directly"**.

Page 3, line 26, after "if:" insert **"limited"**.

Page 3, line 27, after "applies" insert **"to a specific water body"**.

Page 3, line 27, delete "full".

Page 3, line 28, delete "." and insert **"for the combined sewer system whose overflow discharges affect those waters is implemented and the conditions of subsection (b) are satisfied."**

Page 3, line 29, after "weather" insert **"limited"**.

Page 4, line 21, delete "conditions" and insert **"quality based requirements associated with the CSO wet weather limited use subcategory"**.

Page 4, line 21, after "to" insert **"waters affected by wet weather"**.

Page 4, line 22, delete "that result from wet weather events consistent with" and insert **"are determined by"**.

Page 4, line 23, delete "are determined in" and insert **"for the combined sewer system. The water quality based requirements remain"**.

Page 4, delete line 24.

Page 4, line 25, delete "determination remains".

Page 4, line 28, delete "full body contact recreation".

Page 4, line 29, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 4, line 37, delete "recreation" and insert **"recreational"**.

Page 4, line 37, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 4, line 40, after "weather" insert **"limited"**.

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Page 5, line 7, delete "conditions" and insert **"quality based requirements"**.

Page 5, line 10, delete "or is".

Page 5, line 11, delete "implementing".

Page 5, line 17, after "weather" insert **"limited"**.

Page 5, line 20, after "." insert **"The department shall seek approval of the United States Environmental Protection Agency in a timely manner."**

Page 6, line 3, delete "." and insert **"before October 1, 2006."**

Page 6, line 6, delete "The department shall, at the request of the" and insert **"Where appropriate, permits shall contain schedules of compliance requiring the permittee to take specific steps to achieve expeditious compliance with applicable standards, limitations, and other requirements."**

(b) The schedule of compliance shall require compliance as soon as reasonably possible, but may remain in effect as long as the National Pollutant Discharge Elimination System (NPDES) permit requirements are in effect.

(c) The department shall, at the request of the"

Page 6, line 15, delete "(b)" and insert **"(d)"**.

Page 6, line 19, delete "(a)." and insert **"(c)." "**

Page 6, line 21, delete "(c)" and insert **"(e)"**.

Page 6, line 24, delete "(a)." and insert **"(c)." "**

Page 6, line 25, delete "(d)" and insert **"(f)"**.

Page 6, line 26, delete "." and insert **"before October 1, 2006."**

Page 6, after line 26, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before September 1, 2005, the department of environmental management shall review and revise the guidance developed for combined sewer overflow communities to incorporate and reflect the law as in effect on July 1, 2005.

(b) This SECTION expires September 1, 2005.

SECTION 7. An emergency is declared for this act."

and when so amended that said bill do pass.

(Reference is to SB 620 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 1.

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SENATE MOTION

Madam President: I move that Senate Bill 620 be amended to read as follows:

Page 2, line 39, delete "If" and insert "**This subsection applies if**".

Page 3, line 2, delete "full body contact recreation under 327 IAC 2-1-3" and insert "**the recreational use designation that applied to the waters immediately before the application to the waters of the**".

Page 3, delete line 3.

Page 3, line 5, delete "chapter, upon" and insert "**chapter to that subcategory. Upon**".

Page 3, between lines 12 and 13, begin a new paragraph and insert: "**(c) An approved long term control plan shall be incorporated into:**

(1) the NPDES permit holder's NPDES permit; or

(2) an order of the commissioner under IC 13-14-2-6."

Page 3, line 13, delete "(c)" and insert "**(d)**".

Page 4, line 2, delete "directly".

Page 4, line 4, delete "." and insert", **as specified in an approved long term control plan.**".

Page 5, line 10, delete "use designation under" and insert "**recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory**".

Page 5, delete line 11.

Page 5, line 12, delete "January 1, 2005)".

Page 5, line 19, delete "under 327 IAC 2-1-3 and 327" and insert "**that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory**".

Page 5, line 20, delete "IAC 2-1.5-5 (both as in effect on January 1, 2005)".

Page 5, line 29, after "order" insert "**of the commissioner**".

(Reference is to SB 620 as printed February 23, 2005.)

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